

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (amended rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

MARLICE MILLER

DEFENDANTS

ALASKA AIRLINES, INC.**BZ**

ADP

(b) County of Residence of First Listed Plaintiff **ALAMEDA**
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **state of Washington**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Larry E. Cook, Esq.
CASPER, MEADOWS, SCHWARTZ & COOK
2121 North California Blvd., Suite 1020, Walnut Creek, CA 94596
Tel. 925 947-1147; Fax 925 947-1131

Arthur I. Willner, Esq./ Teresa C. Chow, Esq. (118480 / 237694)
BERGER KAHN, A Law Corporation
 4551 Glencoe Avenue, Suite 300, Marina del Rey, CA 90292
 Tel. 310 821-9000; Fax 310 775-8775; Email: awillner@bergerkahn.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item 10)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff)

(For Diversity Cases Only) and One Box for Defendant

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT

TORTS

FORFEITURE/PENALTY

BANKRUPTCY

OTHER STATUTES

- | | | | | | |
|--|--|---|--|---|---|
| <div> <div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment & Enforcement of Judgment</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excl. Veterans)</div> <div>153 Recovery of Overpayment of Veterans' Benefits</div> <div>160 Stockholders' Suits</div> <div>160 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div> </div> | <div> <div>PERSONAL INJURY</div> <div>311 Airplane</div> <div>345 Airplane Product Liability</div> <div>320 Assault, Libel & Slander</div> <div>330 Federal Employers' Liability</div> <div>340 Marine</div> <div>345 Marine Product Liability</div> <div>350 Motor Vehicle</div> <div>355 Motor Vehicle Product Liability</div> <div>360 Other Personal Injury</div> </div> | <div> <div>PERSONAL INJURY</div> <div>362 Personal Injury -- Med. Malpractice</div> <div>365 Personal Injury -- Product Liability</div> <div>368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div>370 Other Fraud</div> <div>371 Truth in Lending</div> <div>380 Other Personal Property Damage</div> <div>385 Property Damage Product Liability</div> </div> | <div> <div>610 Agriculture</div> <div>620 Other Food & Drug</div> <div>625 Drug Related Seizure of Property 21 USC 881</div> <div>630 Liquor Laws</div> <div>640 R.R. & Truck</div> <div>650 Airline Regs.</div> <div>660 Occupational Safety/Health</div> <div>690 Other</div> </div> | <div> <div>422 Appeal 28 USC 158</div> <div>423 Withdrawal 28 USC 157</div> </div> | <div> <div>400 State Resportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced and Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>490 Cable/Sat. TV</div> <div>810 Selective Service</div> <div>850 Securities/Commodities/Exchange</div> <div>875 Customer Challenge 12 USC 3410</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>892 Economic Stabilization Act</div> <div>893 Environmental Matters</div> <div>894 Energy Allocation Act</div> <div>895 Freedom of Information Act</div> <div>900 Appeal of Fee Determination Under Equal Access to Justice</div> <div>950 Constitutionality of State Statutes</div> </div> |
| <div> <div>REAL PROPERTY</div> <div>210 Land Condemnation</div> <div>220 Foreclosure</div> <div>230 Rent Lease & Ejectment</div> <div>240 Torts to Land</div> <div>245 Tort Product Liability</div> <div>290 All Other Real Property</div> </div> | <div> <div>CIVIL RIGHTS</div> <div>441 Voting</div> <div>442 Employment</div> <div>443 Housing/Accommodations</div> <div>444 Welfare</div> <div>445 Amer. w/Disabilities - Employment</div> <div>446 Amer. w/Disabilities - Other</div> <div>440 Other Civil Rights</div> </div> | <div> <div>PRISONER PETITIONS</div> <div>510 Motions to Vacate Sentence</div> <div>Habeas Corpus:</div> <div>530 General</div> <div>535 Death Penalty</div> <div>540 Mandamus & Other</div> <div>550 Civil Rights</div> <div>555 Prison Condition</div> </div> | <div> <div>LABOR</div> <div>710 Fair Labor Standards Act</div> <div>720 Labor/Mgmt. Relations</div> <div>730 Labor/Mgmt. Reporting & Disclosure Act</div> <div>740 Railway Labor Act</div> <div>790 Other Labor Litigation</div> <div>791 Empl. Ret. Inc. Security Act</div> </div> | <div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights</div> <div>830 Patent</div> <div>840 Trademark</div> </div> | <div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff)</div> <div>862 Black Lung (923)</div> <div>863 DIWC/DIWW (405(g))</div> <div>864 SSD Title XVI</div> <div>865 RSI (405(g))</div> </div> |
| | | | <div> <div>IMMIGRATION</div> <div>462 Naturalization Application</div> <div>463 Habeas Corpus - Alien Detainee</div> <div>465 Other Immigration Actions</div> </div> | <div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant)</div> <div>871 IRS—Third Party 26 USC 7609</div> </div> | |

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332(a). 28 U.S.C. §1441(a), (b)
Brief description of cause:
Personal Injury action arising out of airline incident.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S)
IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE
June 9, 2008

SIGNATURE OF ATTORNEY OF RECORD

1 ARTHUR I. WILLNER, ESQ. (SBN 118480)
2 TERESA C. CHOW, ESQ. (SBN 237694)
3 BERGER KAHN
4 A Law Corporation
5 Mail Service:
6 Post Office Box 92621
7 Los Angeles, CA 90009-9998
8 Location:
9 4215 Glencoe Avenue, 2nd Floor
10 Marina del Rey, CA 90292-5634
11 Tel: (310) 821-9000 • Fax: (310) 578-6178
12 awillner@bergerkahn.com
13 tchow@bergerkahn.com
14 Attorneys for Defendant Alaska Airlines, Inc.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 MARLICE MILLER,

18 Plaintiff,

19 vs.

20 ALASKA AIRLINES, INC., DOES 1
21 Through 50, et al.

22 Defendants.

CASE NO
08

2875

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1441(a), (b)
[DIVERSITY JURISDICTION];
DECLARATION OF ARTHUR I.
WILLNER; EXHIBITS A-B

23 TO THE CLERK OF THIS COURT, TO PLAINTIFF, AND TO HER COUNSEL
24 OF RECORD:

25 PLEASE TAKE NOTICE THAT Defendant ALASKA AIRLINES, INC. hereby
26 removes to this Court the state court action described below.

27 1. On May 12, 2008, an action was commenced in the Superior Court of the
28 State of California in and for the County of San Francisco, entitled Marlice Miller v.
Alaska Airlines, Inc. and DOES 1 through 50, as Case Number CGC-08-475214. A copy
of the complete state court file is attached hereto as Exhibit "A." This action arises out of
personal injuries allegedly sustained by Plaintiff while aboard an Alaska Airlines flight.

BERGER KAHN
A Law Corporation
P.O. Box 92621
Los Angeles, CA 90009-9998

E-filing

BZ

1 2. This action is a civil action of which this Court has original jurisdiction
2 under 28 U.S.C. §1332(a), and is one which may be removed to this Court by Defendant
3 Alaska Airlines, Inc. pursuant to 28 U.S.C. §1441(a) and (b), in that it is a civil action
4 between citizens of different states, and the amount in controversy exceeds the sum of
5 \$75,000, exclusive of interest and costs.

6 3. The first date upon which Defendant Alaska Airlines, Inc. received a copy
7 of the Complaint was May 15, 2008, when it was served with the Summons and
8 Complaint. Alaska Airlines filed and served its Answer in the Superior Court on June 4,
9 2008. Accordingly, this removal petition is timely filed pursuant to the provisions of 28
10 U.S.C. §1446(b).

11 4. Complete diversity of citizenship exists in that Plaintiff Marlice Miller is a
12 citizen of the State of California; and Defendant Alaska Airlines, Inc. was at the time the
13 state court action was filed and is a corporation incorporated under the laws of the State
14 of Alaska and having its principal place of business in the State of Washington, and is the
15 only defendant that has been served with the Summons and Complaint in this action.

16 5. Although the Complaint, in accordance with California Code of Civil
17 Procedure §425.10(b), is silent as to the amount of damages sought by Plaintiff, it is
18 facially apparent from the Complaint that the claim exceeds \$75,000. The Complaint
19 alleges that this action arises out of an accident on May 15, 2006 involving an Alaska
20 Airlines flight from Palm Springs to San Francisco, that either just before or after the
21 landing in San Francisco the passenger cabin filled with smoke, that the crew ordered an
22 emergency evacuation on the runway in San Francisco, that Plaintiff and her children
23 escaped through an over-wing emergency exit, and that Plaintiff was injured when she
24 "dropped" from the wing to the pavement. The Complaint further alleges that Plaintiff
25 sustained a serious back injury requiring surgery, that she has incurred substantial
26 medical expenses, and that she was unable to work for an extended period of time due to
27 her injuries.
28

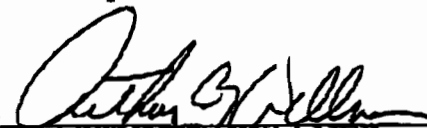
BERGER KAHN
A Law Corporation
P.O. Box 92621
Los Angeles, CA 90009-9998

1 Furthermore, prior to filing this action, Plaintiff's counsel advised Defendant's
2 insurance carrier in writing that, as of March 31, 2008, Plaintiff had incurred close to
3 \$150,000 in medical bills, with estimated future medical bills of an additional \$100,000.
4 Plaintiff's counsel further advised that Plaintiff had been diagnosed with a collapsed disc,
5 for which she underwent an anterior discectomy and fusion on March 9, 2007. Plaintiff's
6 counsel also stated that Defendant's potential exposure exceeds \$2,500,000. (A true and
7 correct copy of Plaintiff's counsel's correspondence of March 31, 2007 is attached hereto
8 as Exhibit "B.") Under these circumstances, it is indisputable that the amount in
9 controversy exceeds the jurisdictional minimum of this Court.

10 6. Accordingly, Defendant Alaska Airlines, Inc. respectfully requests that the
11 action now pending against it in the Superior Court of the State of California, County of
12 San Francisco, be removed to this Court and that the action be placed on the docket of
13 this Court for further proceedings as though originally instituted in this Court.

14 DATED: June 9, 2008

BERGER KAHN
A Law Corporation

15 By: 
16 ARTHUR J. WILLNER
17 TERESA C. CHOW
18 Attorneys for Defendant ALASKA
19 AIRLINES, INC.
20
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DECLARATION OF ARTHUR I. WILLNER

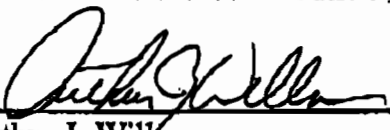
I, Arthur I. Willner, declare:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California, and the United States District Court for the Northern District of California. I am a principal in the law firm of Berger Kahn, counsel of record for Defendant Alaska Airlines, Inc. in this matter. I am the attorney primarily responsible for the defense of this action. If called upon to testify, I could competently do so of my personal knowledge, as follows.

2. Attached as Exhibit "A" is a true and complete copy of the file of the Superior Court of the State of California, County of San Francisco, entitled Marlice Miller v. Alaska Airlines, Inc. and DOES 1 through 50, Case Number CGC-08-475214.

3. Attached as Exhibit "B" is a true and complete copy of correspondence, dated March 31, 2008, from Plaintiff's counsel Richard A. Madsen, Jr., Esq. to Tara Palmer of AIG Aviation, Alaska Airlines' insurance carrier.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on June 9, 2008 at Marina del Rey, California.


Arthur I. Willner

BERGER KAHN
A Law Corporation
P.O. Box 92621
Los Angeles, CA 90009-9998

AFFIDAVIT AND DECLARATION OF PROOF OF SERVICE BY MAIL
(Code Civ. Proc. §§ 1013a(3) and 2015.5)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action.

I am employed by Berger Kahn, A Law Corporation, whose business address is: 4215 Glencoe Avenue, 2nd Floor, Marina del Rey, California 90292 (the "firm").

On June 9, 2008, I served the foregoing document(s) described as **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1441(a), (b)** on the interested parties in this action by placing ☐ the original ☒ true copy(ies) thereof, enclosed in sealed envelope(s) with postage thereon fully prepaid and by causing such envelope(s) to be deposited in the mail at 4215 Glencoe Avenue, 2nd Floor, Marina del Rey, California 90292, addressed as follows:

Larry E. Cook, Esq.
Casper, Meadows, Schwartz & Cook
2121 North California Boulevard, Ste. 1020
Walnut Creek, California 94596
(925) 947-1147
(925) 947-1131

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing with the United States Postal Service: it is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postal meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2008, at Marina del Rey, California.


SANDRA ALVARENGA

EXHIBIT A

Attorney or Party without Attorney: LARRY E. COOK ESQ, Bar #122776 CASPER, MEADOWS, SCHWARTZ & COOK 2121 NO. CALIFORNIA BLVD, STE 1020 Walnut Creek, CA 94596 Telephone No: 925-947-1147 FAX No: 925-947-1131		IMAGED MAY 27 2008		For Court Use Only FILED San Francisco County Superior Court MAY 21 2008 GORDON PARK LI, Clerk BY: <i>[Signature]</i> Deputy Clerk	
Attorney for: Plaintiff		Ref. No. or File No.:			
Insert name of Court and Judicial District and Branch Court: SAN FRANCISCO County SUPERIOR Court					
Plaintiff: MARLENE MILLER					
Defendant: ALASKA AIRLINES, INC					
PROOF OF SERVICE SUMMONS & COMPLAINT		Hearing Date	Time	Dept/Div	Case Number: CGC08475214

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS (AND) COMPLAINT; NOTICE TO PLAINTIFF, ADR PROGRAM INFORMATION PACKAGE, BLANK STIPULATION TO ADR, BLANK CASE MANAGEMENT STATEMENT, JUDICIAL MEDIATION PROGRAM.
3. a. Party served: **ALASKA AIRLINES, INC.**
b. Person served: **BECKY DEGEORGE, AGENT FOR SERVICE**
4. Address where the party was served: **CSC**
2730 GATEWAY OAKS DRIVE, STE 100
SACRAMENTO, CA 95833
5. I served the party:
a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Thu., May. 15, 2008 (2) at: 11:25AM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
on behalf of **ALASKA AIRLINES, INC.**
Under CCP 116.10 (corporation)

7. Person Who Served Papers:
a. **PHIL OLIVAS**

1280 BOULEVARD WAY #205
WALNUT CREEK, CA 94595
(925) 947-3470
FAX (925) 947-3480
WWW.ONEHOUR.NET

LEGAL

- Recoverable Cost Per CCP 1033.5(a)(4)(B)
- d. The Fee for Service was: **\$75.00**
 - e. I am: (3) registered California process server
(i) Employee
(ii) Registration No.: **#93-027**
(iii) County: **SACRAMENTO**

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Thu, May. 15, 2008

Judicial Council Form POS-010
Rule 2.130(a)&(b) Rev January 1, 2007

PROOF OF SERVICE
SUMMONS & COMPLAINT

[Signature]
(PHIL OLIVAS)

356650.anspla.11663

EXHIBIT A 000000

**SUMMONS
(CITACION JUDICIAL)**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):****ALASKA AIRLINES, INC. and DOES 1 through 50****YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):****MARLICE MILLER**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
400 McAllister Street
San Francisco, California 94102

CASE NUMBER 8 - 475214
COURT CLERK

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

LARRY E. COOK (SEN 122776)

925-947-1147

925-947-1131

CASPER, MEADOWS, SCHWARTZ & COOK

2121 N. California Boulevard

Walnut Creek, California 94596

COURT CLERK

DATE: MAY 12 2008

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.50 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, and address):
LARRY E. COOK (SAN 122776)
CASPER, MEADOWS, SCHWARTZ & COOK
2121 N. California Boulevard
Suite 1020
Walnut Creek, California 94596
TELEPHONE NO. **925-947-1147** FAX NO. **925-947-1131**
ATTORNEY FOR: **Plaintiff MARLICE MILLER**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
STREET ADDRESS: **400 McAllister Street**
MAILING ADDRESS:
CITY AND ZIP CODE: **San Francisco, California 94102**
BRANCH NAME: **IN AND FOR THE COUNTY OF SAN FRANCISCO**
CASE NAME: **MILLER v. ALASKA AIRLINES, INC., et al.**

CIVIL CASE COVER SHEET
☒ **Unlimited** (Amount demanded exceeds \$25,000)
☐ **Limited** (Amount demanded is \$25,000 or less)
Complex Case Designation
☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

FILED

Superior Court of California
County of San Francisco

MAY 12 2008

MAY 12 2008

GORDON PARK-LI, Clerk

Deputy Clerk

CASE NUMBER

JUDGE

DEPT:

GGC - 08 - 475214

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/POWI (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input checked="" type="checkbox"/> Other PIP/POWI (23) Non-PIP/POWI (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/POWI tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandamus (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **Three**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 12, 2008

LARRY E. COOK (SAN 122776)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 Larry E. Cook (State Bar No. 122776)
2 CASPER, MEADOWS, SCHWARTZ & COOK
3 A Professional Corporation
4 California Plaza
5 2121 North California Blvd., Suite 1020
6 Walnut Creek, California 94598
7 Telephone: (925) 947-1147
8 Facsimile: (925) 947-1131

9 Attorneys for Plaintiff
10 Marlice Miller

FILED
Superior Court of California
County of San Francisco

MAY 12 2008

GORDON PARK-LI, Clerk
BY: [Signature] *W*
Clerk Management Conference SET

SUMMONS ISSUED OCT 10 2008 - 9^{AM}

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

12 MARLICE MILLER,

13 Plaintiff,

14 vs.

15 ALASKA AIRLINES, INC. DOES 1
16 Through 50, et al. *W*

17 Defendants.

Case No. **CCC - 08 - 475214**

COMPLAINT

Aircraft Accident; Personal Injuries

18
19 PLAINTIFF, MARLICE MILLER, COMES BEFORE THIS HONORABLE COURT, AND
20 ALLEGES:

21 1. Defendant Alaska Airlines, Inc. is an Alaska Corporation doing business
22 in the State of California. It has not designated any County as its principal place of
23 business in this State and therefore may be sued in any County.

24 2. The events which precipitated this action occurred, in part, at the San
25 Francisco International Airport, a facility owned and operated by the City and County
26 of San Francisco.

27 3. Plaintiffs are ignorant of the true names and capacities of those
28 defendants named as DOES 1 through 50. Plaintiffs will amend this complaint to

1 state the true names and capacities of such defendants when they have been
2 ascertained. Each fictitiously-named defendant contributed to the acts and omissions
3 alleged in this complaint, and caused plaintiff to suffer damages as alleged. Each
4 reference in this complaint to "defendant," "defendants," or to a specifically-named
5 defendant, refers also to DOES 1 through 50.

6
7 4. At all times mentioned in this complaint, each defendant, including each
8 DOE defendant, was the agent, employee, and servant of each of their co-
9 defendants, acting in the course and scope of said agency or employment pursuant
10 to the direction and control of each co-defendant, with each co-defendant's
11 knowledge, consent, and approval. Each defendant and co-defendant has ratified
12 the acts of its co-defendants.

13 5. At all times mentioned in this complaint, the actions and failures to act by
14 personnel employed by Alaska Airlines on Flight 579 which landed at San Francisco
15 International Airport on May 15, 2006 occurred within the course and scope of these
16 individuals' employment with Alaska Airlines.

17 6. Alaska Airlines is therefore liable for any actionable conduct by these
18 employees under the doctrine of respondeat superior.

19 7. On May 15, 2006, Alaska Airlines operated Flight 579, a MD-80 aircraft,
20 from Palm Springs to San Francisco.

21 8. Plaintiff Marlice Miller was a passenger on that flight with her two minor
22 children.

23 9. Slightly before or just after the MD-80 aircraft landed at San Francisco
24 International Airport, members of the crew and passengers noticed the presence of
25 smoke in the cabin.

26 10. On information and belief, Plaintiff alleges that the source of the smoke
27 was a broken oil line on the aircraft.

28 11. After the aircraft stopped on the runway, Alaska Airlines crew members
directed passengers, including Marlice Miller and her children, to evacuate the

1 aircraft.

2 12. The Alaska Airlines crew members, however, failed to inform Plaintiff
3 Marlice Miller or her children of the proper method of evacuation.

4 13. Plaintiff Marlice Miller and her children were seated near the right over-
5 wing emergency exit. Alaska Airlines crew members failed to assist Plaintiff or other
6 passengers in her location on how to safely navigate the exit and descend to the
7 ground.

8 14. No Alaska Airlines crew members stationed themselves at the exits, on
9 the wing or on the ground under the wing to assist passengers to make a safe exit.

10 15. Evacuating passengers who used the over-wing emergency exists were
11 required to jump to the ground from the wing. There were no ramps, slides or chutes
12 or Alaska Airline personnel to assist passengers to safely drop from the wing to the
13 ground.

14 16. After Plaintiff Marlice Miller assured herself that her children were safely
15 on the ground, she dropped from the wing to the pavement. When she hit the
16 ground, her knees buckled and she collapsed onto the tarmac.

17 17. While Plaintiff Marlice Miller waited on the tarmac for buses to take her
18 and her children to the terminal, no Alaska Airlines employee made any effort to
19 render medical assistance to her.

20 18. As a result of Plaintiff Marlice Miller's emergency evacuation from the
21 Alaska Airlines aircraft and her drop from the aircraft's wing to the tarmac, Ms. Miller
22 sustained a severe, painful and debilitating injury to her back. The injury caused her
23 constant and persistent pain; severely limited her occupational and social activities
24 and required extended treatment and surgery. She has incurred substantial medical
25 expenses and was unable to pursue her occupation for an extended period of time.

26 ////

27 ////

28 ////

**FIRST CAUSE OF ACTION
Against Defendant Alaska Airlines
Negligence – Breach Of Duty As Common Carrier**

19. Plaintiff incorporates the allegations of paragraphs 1 through 18 of this complaint as though fully set forth herein.

20. At all times relevant, Defendant Alaska Airlines was a common carrier as defined in California Civil Code §§ 2100 and 2168 and therefore was required by law to use the utmost care and diligence for the safe carriage of its passengers and was further required to provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

21. In its conduct, including its action and inaction alleged in this complaint, Alaska Airlines failed to use utmost care and diligence and thereby breached its duty to Plaintiff Marlice Miller.

22. As a proximate result of the failure of an oil line, passengers, including Plaintiff, were forced to evacuate the aircraft through emergency exits. As heretofore alleged, Plaintiff was further required to drop from the right wing of the aircraft onto the ground.

23. As heretofore alleged, Plaintiff sustained a severe back injury when she struck the ground after dropping from the wing, unassisted by any crew members.

WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS HEREAFTER SET FORTH:

**SECOND CAUSE OF ACTION
Against Defendant Alaska Airlines
Failure to Operate Airworthy Aircraft
14 CFR § 91.7**

24. Plaintiff incorporates the allegations of paragraphs 1 through 18 of this complaint as though fully set forth herein.

25. At all times relevant, pursuant to the regulations of the United States Federal Aviation Administration, specifically Regulation 14 CFR 91.7, Alaska Airlines

1 and the pilot of Flight 579 were required to operate an airworthy aircraft, i.e., an
2 aircraft that was in condition for safe operation.

3 26. On information and belief, Plaintiff alleges that Alaska Airlines, acting
4 through its employees, violated 14 CFR § 91.7 by operating Flight 579 on May 15,
5 2006 when the aircraft was not in a condition for safe operation.

6 27. On information and belief, Plaintiff alleges that Alaska Airlines operated
7 the aircraft with a defective oil line which ruptured just prior or after Flight 579 landed
8 at San Francisco International Airport.

9 28. As a proximate result of the failure of an oil line, passengers, including
10 Plaintiff, were forced to evacuate the aircraft through emergency exits. As heretofore
11 alleged, Plaintiff was further required to drop from the right wing of the aircraft onto
12 the ground.

13 29. As heretofore alleged, Plaintiff sustained a severe back injury when she
14 struck the ground after dropping from the wing, unassisted by any crew members.

15 WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS HEREAFTER SET
16 FORTH:

17 **THIRD CAUSE OF ACTION**
18 **Against Defendant Alaska Airlines**
19 **Operation Of Aircraft In Careless Or Reckless Manner 14 CFR §**
20 **91.13**

21 30. Plaintiff incorporates the allegations of paragraphs 1 through 29 of this
22 complaint as though fully set forth herein.

23 31. At all times relevant, pursuant to the regulations of the United States
24 Federal Aviation Administration, specifically Regulation 14 CFR 91.13, Alaska Airlines
25 was forbidden from operating its MD-80 aircraft on Flight 579 on May 15, 2006 from
26 Palm Springs to San Francisco, California in a careless or reckless manner.

27 32. Alaska Airlines violated that regulation by operating Flight 579 on May
28 15, 2006 in a careless or reckless manner which posed a grave threat of serious
bodily injury or death to the passengers, including Plaintiff Marlice Miller.

1 33. Plaintiff alleges, on information and belief, that as a result of the
2 carelessness of Alaska Airlines and its employees, in violation of 14 CFR § 91.13, the
3 MD-80 aircraft on which Plaintiff was a passenger sustained a broken oil line, causing
4 smoke to enter the passenger cabin, posing a grave threat to passengers, including
5 Plaintiff Marlice Miller, and resulting in a forced evacuation of the aircraft.

6 34. As a proximate result of the failure of an oil line, all passengers,
7 including Plaintiff, were forced to evacuate the aircraft through emergency exits.

8 35. Acting in a careless or reckless manner, in violation of 14 CFR 91.13,
9 Alaska Airlines' personnel failed to station themselves at the exits, on the wing or on
10 the ground under the wing to assist passengers to make a safe exit. When Plaintiff
11 hit the ground, her knees buckled and she collapsed onto the tarmac.

12 36. As heretofore alleged, Plaintiff sustained a severe back injury when she
13 struck the ground after dropping from the wing, unassisted by any crew members.

14 WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS HEREAFTER SET
15 FORTH

- 16 1) For general damages according to proof;
17 2) For special damages according to proof;
18 3) For prejudgment interest according to proof; and
19 4) For such other and further relief as the court may deem reasonable and just.
20
21

22 Dated: May 12, 2008


Larry E. Cook
CASPER, MEADOWS, SCHWARTZ & COOK
Attorneys for Plaintiff
Marlice Miller

JUN-24-2008 10:27

1 ARTHUR I. WILLNER, ESQ. (SBN 118480)
 2 TERESA C. CHOW, ESQ. (SBN 237694)

3 BERGER KAHN

4 A Law Corporation

5 Mail Service:

6 Post Office Box 92621

7 Los Angeles, CA 90009-9998

8 Location:

9 4551 Glencoe Avenue, Suite 300

10 Marina del Rey, CA 90292-5634

11 Tel: (310) 821-9000 • Fax: (310) 775-8775

12 Attorneys for Defendant Alaska Airlines, Inc.

ENDORSED
 FILED
 Superior Court of California
 County of San Francisco

JUN 04 2008

GORDON, Clerk
 BY: [Signature] Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO

MARLICE MILLER,

Plaintiff,

vs.

ALASKA AIRLINES, INC., DOES 1
 Through 50, et al.

Defendants.

CASE NO. CGC-08-475214

DEFENDANT ALASKA AIRLINES,
 INC.'S ANSWER TO PLAINTIFF'S
 COMPLAINT

DATE ACTION FILED: 05/12/2008
 TRIAL DATE: None

COMES NOW DEFENDANT ALASKA AIRLINES, INC., for itself and no
 others, in answer to PLAINTIFF MARLICE MILLER's Complaint on file herein, and
 hereby admits, denies and alleges as follows:

1. Pursuant to the relevant provisions of section 421.30 of the California Code
 of Civil Procedure, Defendant denies generally and specifically each and every allegation
 of Plaintiff's Complaint, and the whole thereof, and denies that Plaintiff has been
 damaged in any amount or sums whatsoever, or at all.

BERGER KAHN
 A Law Corporation
 P.O. Box 92621
 Los Angeles, CA 90009-9998

1 For its affirmative defenses, Defendant alleges as follows:

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State a Claim)**

4 2. The Complaint, and each purported cause of action contained therein, fails
5 to state a claim against this answering Defendant upon which relief can be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Speculative and/or Uncertain Damages)**

8 3. Defendant is informed and believes and thereon alleges that Plaintiff's
9 damages, if any, are speculative and/or uncertain and therefore not compensable.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **(Failure to Mitigate)**

12 4. Defendant is informed and believes and thereon alleges that the Complaint
13 and each purported cause of action contained therein are barred because Plaintiff failed to
14 mitigate her damages.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Comparative Negligence)**

17 5. Defendant is informed and believes and thereon alleges that the damages to
18 Plaintiff, if any, were directly caused in full or in part by Plaintiff's negligence,
19 carelessness, and/or recklessness, or that of a third party, for which this answering
20 Defendant bears no responsibility, and/or which comparatively reduces the percentage of
21 negligence, fault and/or liability, if any, of this answering Defendant.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 **(Lack of Causation)**

24 6. Defendant is informed and believes and thereon alleges that the damages to
25 Plaintiff, if any, were the result of superceding or intervening causes arising from acts or
26 omissions of parties which this answering Defendant neither controlled nor had the right
27 to control.
28

BERGER KAHN

A Law Corporation

P.O. Box 97621

Los Angeles, CA 90099-9998

SIXTH AFFIRMATIVE DEFENSE**(Federal Preemption)**

7. The state law causes of action contained in the Complaint are barred because Plaintiff's claims are preempted by federal law, including but not limited to the Airline Deregulation Act, and the Federal Aviation Act and the Federal Aviation Regulations promulgated thereto.

SEVENTH AFFIRMATIVE DEFENSE**(Contract of Carriage)**

8. The Complaint, and each cause of action alleged therein, is barred by the terms and conditions of the contract of carriage that were incorporated in Plaintiff's airline tickets.

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff take nothing pursuant to her Complaint, that judgment be entered in favor of answering Defendant and against Plaintiff, and that the Complaint be dismissed with prejudice;
2. For costs of suit incurred herein;
3. For any reasonable attorneys' fees allowed by law; and
4. For further relief as the Court may deem just and proper.

DATED: June 4, 2008

BERGER KAHN
A Law Corporation

By: 

ARTHUR I. WILLNER
TERESA C. CHOW

Attorneys for Defendant ALASKA
AIRLINES, INC.

AFFIDAVIT AND DECLARATION OF PROOF OF SERVICE BY MAIL

(Code Civ. Proc. §§ 1013a(3) and 2015.5)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action.

I am employed by Berger Kahn, A Law Corporation, whose business address is: 4215 Glencoe Avenue, 2nd Floor, Marina del Rey, California 90292 (the "firm").

On June 4, 2008, I served the foregoing document(s) described as **DEFENDANT ALASKA AIRLINES, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action by placing ☐ the original ☒ true copy(ies) thereof, enclosed in sealed envelope(s) with postage thereon fully prepaid and by causing such envelope(s) to be deposited in the mail at 4215 Glencoe Avenue, 2nd Floor, Marina del Rey, California 90292, addressed as follows:

Larry E. Cook, Esq.
Casper, Meadows, Schwartz & Cook
2121 North California Boulevard, Ste. 1020
Walnut Creek, California 94596
(925) 947-1147
(925) 947-1131

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing with the United States Postal Service: it is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postal meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 4, 2008, at Marina del Rey, California.


SANDRA ALVARENGA

EXHIBIT B

MADSEN & WOLCH, L.L.P.**A T T O R N E Y S A T L A W**

Richard A. Madsen, Jr.
Joseph H. Wolch
Pamela L. Marraccini
Sarah B. Orr

2055 North Broadway, Suite 100
Walnut Creek, California 94596

telephone: (925) 974-0800
facsimile: (925) 974-0808
e-mail: MWLLP@aol.com

March 31, 2008

Tara Palmer
AIG Aviation
1175 Peachtree Street N.E., Suite 1000
Atlanta, GA 30361

Privileged and Confidential Pursuant to Evidence Code §1152 and §1154

Re: Our Client: Marlice Miller
Your Insured: Alaska Airlines
Claim No: 0006691-1
Date of Incident: 5/15/06

Dear Ms. Palmer:

Our law firm represents Marlice Miller regarding her injuries and claims against your insured, Alaska Airlines. On May 15, 2006, the Alaska Airlines flight on which Ms. Miller was a passenger experienced extreme technical difficulties requiring an emergency landing and evacuation of the aircraft which resulted in severe personal injuries to Ms. Miller.

We set forth herein a statement of the facts of Ms. Miller's injuries, the basis for your client's liability and an itemization of Ms. Miller's recoverable damages.

As all content in this document is presented as part of a settlement communication, such content is privileged pursuant to California Evidence Code Sections 1152 and 1154. The results of our investigation remain our attorney work product, and no disclosure herein constitutes a waiver of such doctrine or any other privilege. We are providing you with this information as openly as possible to promote a settlement of this case. Our analysis of this matter is summarized as follows.

I. STATEMENT OF THE FACTS

On May 15, 2006, Ms. Miller, , along with her two minor children, were passengers on Alaska Airlines flight 579 from Palm Springs to San Francisco, California. Just prior to landing at San Francisco International Airport, the cabin began to fill with smoke. The aircraft made an emergency landing and the flight crew advised the passengers that they must make an immediate emergency exit.

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EXHIBIT R

Tara Palmer
AIG Aviation
March 31, 2008
Page 2 of 5

After ordering the emergency evacuation, the Alaska Airlines flight crew provided no instruction to passengers with respect to the proper evacuation procedure other than to use their nearest emergency exit. Ms. Miller and her children were seated near the right over-wing emergency exit. No assistance was provided to passengers seated around the over-wing exits on how to safely navigate the emergency exit and descend to the ground. No airline personnel were stationed at the over-wing exits, either in the plane or on the ground, to assist passengers in making a safe exit. Ms. Miller and her children were forced to exit the plane extremely rapidly as the cabin had filled with thick black smoke. Ms. Miller's foot got caught as she attempted to exit from the cabin onto the wing. Once she had freed herself and exited the plane onto the wing, Ms. Miller was horrified to discover that there were no slides, ramps, steps or airline personnel to assist the passengers in making the over seven foot drop from the edge of the wing to the ground. Ms. Miller, after assuring her children were on the ground, sat on the wing, slid down to the edge and then dropped over seven feet to the ground below. Ms. Miller's knees buckled and she collapsed upon impact with the tarmac.

After gathering herself, Ms. Miller's first priority was to ensure that her children were safe and out of harms way. Ms. Miller and her family were left to stand on the tarmac for over half an hour before any assistance was rendered. Thereafter, busses arrived to take the passengers to the terminal. During the time Ms. Miller and her children were left on the tarmac, no Alaska Airlines personnel made any efforts to render medical or other assistance, nor was any information provided regarding the cause of the emergency evacuation or what measures were being taken to assist the passengers now stranded in the middle of the tarmac.

After Ms. Miller was finally taken to a gate and given instructions by Alaska Airlines on retrieving her families' belongings, several hours had elapsed. Ms. Miller returned to her home in San Ramon with her then fiancé and children. That night, Ms. Miller experienced anxiety and nervousness which prevented her from sleeping. The following morning Ms. Miller began to experience lower back and neck pain. Over the next few days the pain increased to the point where she had significant difficulty moving. Ms. Miller immediately sought medical treatment from her primary care physician, Dr. Dolores K. Musco on May 18, 2006. Ms. Miller was given pain medication and advised to return in one week if symptoms did not resolve.

When Ms. Miller's symptoms did not resolve, she returned to Dr. Musco who diagnosed her with lumbago and prescribed Vicodin, Flexaril and administered Toradol shots. The treatment with Dr. Musco continued for several weeks. Eventually, Dr. Musco referred Ms. Miller to physical therapy and to Dr. Rovner, the spine specialist she had seen in 2005 for removal of bone spurs. Dr. Rovner originally diagnosed Ms. Miller with soft tissue injuries resulting from the emergency evacuation. He found that she had not aggravated the prior

Tara Palmer
AIG Aviation
March 31, 2008
Page 3 of 5

surgical sight and had not developed any new symptoms related to her 2005 bone spur problem. Dr. Rovner recommended a conservative course of treatment including hot/cold packs and pain medication believing that her symptoms would resolve over time. Upon the advice of Dr. Musco and Dr. Rovner, Ms. Miller began attending physical therapy in November, 2006.

Over the next several months, Ms. Miller attempted to follow her doctors' advice and allow the injury to resolve on its own. During that time, Ms. Miller was in the process of completing her training to become an esthetician. Due to her extreme back pain she was not able to sit for more than twenty minutes at a time. Despite the delays caused by her limitations, Ms. Miller was eventually able to complete her course work and obtain her license. However, due to her extreme pain she was unable to open her own practice as she had been planning. Also during that time period, Ms. Miller had her long planned wedding to Kent Miller. Due to her constant and persistent back pain, Ms. Miller had to ingest significant amounts of pain medication to make it through the ceremony and reception. She was unable to dance at her wedding and was anxious for the party to conclude due to her extreme pain. Her back pain was so severe that she and her new husband were not able to take a honeymoon as she was unable to travel.

When Ms. Miller's back pain did not resolve after nearly seven months, she sought treatment from Dr. Narloch, a pain management specialist. He diagnosed her with heterotopic ossification and lumbosacral radiculopathy and ordered bone scans and additional Cat Scans to determine the appropriate course of treatment. Thereafter, he ordered a facet joint injection. Following this diagnosis, Ms. Miller returned to Dr. Rovner to consult on her treatment options, including spinal fusion. In February, 2007, Dr. Rovner diagnosed Ms. Miller with spondylosis at L5-S1 and L4-5 and facet arthropathy at L5-S1. He prescribed facet block injections to assist in further diagnosis and pain management.

After nearly ten months with little to no improvement, Ms. Miller was experiencing debilitating pain. She was unable to sit or stand for any duration and was limited to light work and walking less than two blocks. In February, 2007, Ms. Miller sought a second opinion from Dr. Hieu Ball. Dr. Ball diagnosed Ms. Miller with a collapsed disc and recommended an anterior discectomy and fusion which was performed on March 9, 2007. While the results of the surgery have been beneficial to date, Ms. Miller is still recovering and the extent of her permanent limitations is not yet known.

As a result of the injuries caused by the emergency exit from Alaska Airlines flight 579, Ms. Miller has suffered a severe spinal injury requiring surgical intervention and nearly two years of debilitating pain which has limited her ability to engage in normal daily activities and has had a negative effect on her career and family life. Prior to her injuries, Ms. Miller was physically active and highly involved in her families' life. Her injuries have forced her

Tara Palmer
AIG Aviation
March 31, 2008
Page 4 of 5

to give up the vast majority of physical activities she previously enjoyed. The large amounts of narcotic pain medications and the lengthy recovery from her spinal surgery have prevented Ms. Miller from participating in the family life she previously cherished. Liability in this case rests squarely with your insured. The evidence is clear and incontrovertible and we are confident a jury will see it that way as well.

II. LIABILITY

This case involves a claim for personal injury arising out of the negligent operations of Alaska Airlines with respect to the emergency landing and evacuation of flight 579 on May 15, 2006. Liability against your insured is clear. Ms. Miller was a passenger on Alaska Airlines, a common carrier, when she was forced to abandon the aircraft due to a maintenance failure. California Civil Code §2100, requires common carriers to "use the utmost care and diligence for [passengers] safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill." Alaska Airlines clearly failed to adhere to its required duty by pushing a defective aircraft into service and failing to safeguard its passengers' safety during the emergency evacuation.

III. MS. MILLER'S RECOVERABLE DAMAGES

A breakdown of Ms. Miller's recoverable damages, by category and type, is itemized below:

1. Past and Future Medical Bills and Medication Bills:

As a result of Alaska Airlines undeniable negligence, Ms. Miller endured excruciating pain and the life long limitations of her resulting spinal surgery. Copies of Ms. Miller's medical records are attached hereto as "Exhibit A." Ms. Miller has incurred approximately \$147,597.34 in medical bills to date. (See composite "Exhibit B.") Accent Health Care has a \$58,461.95 (through June, 2007) lien for medical care provided to Ms. Miller as a result of her injuries. (See "Exhibit C.") This lien will increase as current treatment is added.

Per your request, I attach hereto as "Exhibit D" copies of Ms. Miller's medical records relating to her 2005 spinal surgery, which clearly evidence a complete recovery prior to May 15, 2006.

Ms. Miller continues to suffer significant pain and emotional distress as a result of the accident. While it is unknown at this time the extent of further medical treatment Ms. Miller will require, it is estimated that future medical bills and medications will exceed \$100,000.00.

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Tara Palmer
AIG Aviation
March 31, 2008
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2. General Damages for PHYSICAL Pain:

Ms. Miller suffered severe physical pain from this ordeal. As stated above, Ms. Miller endured nearly a year of debilitating pain prior to her spinal surgery which itself left her in so much pain she was forced to take Oxycontin. Ms. Miller's pain was so severe and debilitating that she experienced significant depression as a result.

3. General Damages for EMOTIONAL Anguish:

As discussed above, Ms. Miller experienced significant emotional anguish as a result of the emergency evacuation. Ms. Miller suffered both the trauma associated with the emergency exit and the emotional anguish associated with the debilitating pain of her resulting injury. Ms. Miller has also suffered significant mental anguish while she was forced to watch helplessly as the plane filled with smoke, unable to protect her children as they fled the plane unassisted via the precarious over-wing exit.

Total Exposure: Greater than \$2.5 million dollars.

IV. CONCLUSION

Due to Ms. Miller's serious personal injuries and invasive medical treatment, we view this as a matter of substantial liability against your insured. My firm is prepared to immediately initiate litigation if necessary. As a courtesy, however, my client is willing to discuss resolution of her claims provided that negotiations are realistic and productive. I look forward to hearing from you after you have reviewed the enclosed materials.

Very truly yours,
MADSEN & WOLCH, L.L.P.



Richard A. Madsen, Jr.,
Attorney for Marlice Miller

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